

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.497 of 2015
and
M.P.No.1 of 2015

Tamil Nadu Electricity Board,
rep by its Chairman,
No.800, Anna Salai,
Chennai-92.

.. Appellant/Respondent

Vs.

TNEB - Thozhilalar Aykkiya Sangam,
rep by its General Secretary,
No.7,V.M.Street,
Royapettah,
Chennai-14.

.. Respondent/Petitioner

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 22.03.2013 made in W.P.Nos.9525 of 2003.

Petition presented under Article 226 of The Constitution of India praying for a Writ of Declaration declaring that the action of the respondent in not paying Dearness Allowance to the workmen employed by them, at the rate of 49% of the basic pay w.e.f. 01.01.2002 to 30.06.2002 and at the rate of 52% of the basic pay w.e.f. 01.07.2002 respectively as illegal, arbitrary and unjust and consequently direct the respondent to pay Dearness allowance to the workmen at the rate of 49% of the basic pay w.e.f. 01.01.2002 to 30.06.2002 and at the rate of 52% of the basic pay w.e.f. 01.07.2002, award costs.

For Appellant : Mr.R.Varalakshmi

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant appeal is directed against the order dated 22.03.2013 passed in W.P.No.9525 of 2003.

2. The writ petitioner/respondent herein is an Union of workers in the respondent Board. The writ petitioner union, feeling aggrieved by the non payment of dearness allowance (for short "D.A") at the rate of 49% of the basic pay with effect from 01.01.2002 to 30.06.2002 and at the rate of 52% of the basic pay with effect from 01.07.2002, as being illegal, arbitrary and unjust and consequently for a direction to pay the D.A. at the aforesated rates with effect from the dates as aforesated, filed the writ petition.

3. The learned Single Judge, relying on the decision dated 14.09.2012 passed by another learned Single Judge in W.P.No.36197 of 2002, allowed the writ petition in the same terms. The learned Single Judge, while disposing of the petition, considered the issue as under :

"I heard the counsel for both sides and perused the records. A perusal of the records would show that there is no dispute with regard to the enhancement of dearness allowance payable from 01.01.2012 by issuing an order in BP No.58 dated 29.10.2002. While so, the short point for consideration is whether the enhanced dearness allowance has to be credited to the general provident fund account of the individual or it has to be paid in cash. The learned counsel for the petitioners relied on the order dated 11.08.1999 passed by this Court in WP No.10474 of 1999 etc., batch wherein it was held that the respondent/Electricity Board will be justified in crediting the arrears of Dearness Allowance to the credit of provident fund account, provided if the individual has given consent or the settlement entered into between the Board the the trade union provides for the same. Similar was the view taken by this Court in the latest order dated 14.09.2012 passed in WP No.36197 of 2002 wherein it was held that it is not open to the respondent to postpone the arrears of dearness allowance and credit the same to the General Provident Fund account of the employee, without the consent of the employees. x x x x x x x"

4. The learned counsel appearing for the appellant/ respondent Board therein challenges the legality and validity primarily, inter-alia, on the ground that the revision pursuant to the wage revision settlement dated 8.7.1998 was subject to formula as adopted and followed by the State Government. Thus, members of the union are not entitled to strictly in terms of the settlement as the same was subject to formula adopted by the State Government. The State Government had sanctioned D.A to its employees belatedly at the rate of 49% with effect from 01.10.2002 and accordingly, members of the writ petitioner union are also entitled to revision of D.A with effect from that date. The direction to grant 49% DA with effect from 01.01.2002 is not just and proper and contrary to the policy

decision. It is also contended that financial condition of the appellant Board is in the red and it is difficult to pay the D.A, as aforesaid to its employees.

5. We have examined the submissions of the learned counsel for the appellant and also considered, on perusal, the pleadings and documents appended thereto.

6. The memorandum of settlement dated 8.7.1998 executed under Section 18(1) of the Industrial Disputes Act provides for several benefits. Clause 5 deals with Dearness Allowance, prescribing that the D.A rates will be revised twice in a year, i.e., on 1st January and 1st July taking into account the variations in the previous twelve months average of the All India Consumer Price Index numbers, adopting the same formula as followed by the State Government. Clause 17 further prescribes that the settlement will be in force for a period of four years with effect from 01.12.1996. There is no quarrel on execution and implementation of the said settlement. The only question is how the D.A be worked out. The purported adoption of D.A is not with regard to the date from which it will be effective. It is only in respect of how to determine the D.As. Two formulas have been contemplated, one is taking variation and computation of twelve months average of the All India Consumer Price Index numbers and secondly, adopting the same formula as followed by the State Government.

7. The appellant is not disputing the computation of D.A at the rate of 49%. The dispute is whether it has to be made effective from 1st January or from 1st October, 2002 and the second revision from 1st July of the concerned year. If the settlement is subject to adoption of the formula in respect of computation of the D.A., not in respect of the applicability of the date as is evident from the mere perusal of the clause, the contention of the appellant that the D.A would be payable from 01.10.2002 as it would be paid to other Government employees, cannot be countenanced. We are unable to agree with the said submission of the appellant.

8. The second consideration in respect of financial condition is not proper. On this account, we are not in agreement with the appellant as the settlement has taken place between the management and the employees keeping in mind all factors of the working of the Board.

9. The decision dated 14.09.2012 passed by the learned Single Judge in W.P.No.36197 of 2002 [Central Organisation of Tamil Nadu Electricity Employees (CITU) Vs. Tamil Nadu Electricity Board], which has been referred to and relied on by the learned Single Judge, has attained finality. In the said decision, only direction issued was that the appellant board was liable to pay D.A payable at the revised rate from 1.1.2002 to 30.09.2002 and also the arrears within a period

of ten weeks from the date of receipt of copy of the order. In other respects as to how payment is to be made, the decision was taken earlier in the judicial proceedings, which is not the subject matter of challenge in this petition. We are not inclined to go into the same.

10. In view of the foregoing, there is no illegality or irregularity, warranting interference, at this stage. The writ appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vvk

To
The Chairman,
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai-92.

+ 1 cc to Mrs.R.Varalakshmi Advocate SR.17407

UG(CO)
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W.A.No.497 of 2015

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